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Governor
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Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

ROBERT L. MORGAN
Executive Director

JERRY D. OLDS
State Engineer/Division Director

STATE OF UTAH
DIVISION OF WATER RIGHTS

DIVISION OF WATER RIGHTS,)	
)	HEADGATE NOTICE
)	SEAA # 1065
vs.)	
Sandy Ranch)	Distribution Acct. #100774
)	Water Right: 95-15, 95-16

TO: Keith A. Durfey
P.O. Box 116
Bicknell, UT 84715

Jan Ellet, Lower Fremont water commissioner, has indicated he is unable to regulate and control the flows on your Oak Creek diversion to Pleasant Creek, because of the lack of operable control structure. Section 73-5-4 of the Utah Code Annotated, 1953 as amended, states in part:

"Every person using water in this state shall construct or install and maintain a substantial head gate, cap, valve or other controlling works, weir, flume and measuring device at each point where water is diverted or turned out, for the purpose of regulating and measuring the quantity of water that may be used. Such controlling works or measuring device shall be of such design as the state engineer may approve and so that the same can be locked and kept set by him or his assistants... If the owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect to construct such headgates, caps, valves, flumes or measuring devices after thirty days notice to do so by the state engineer, the state engineer may forbid the use of water until the user thereof shall comply with this requirement, or the state engineer may proceed to construct or install or cause to be installed such controlling works or measuring devices, and the cost of the same shall be a lien against the lands and water rights served thereby, and the state engineer is authorized to bring such action in the name of the state to foreclose such lien."

Therefore, you are hereby notified that your diversion headgate needs to be repaired or replaced so that it is operable and lockable. These improvements must be completed prior to March 25, 2004. We would recommend that you talk with the commissioner to see what he would recommend be installed in your particular situation.

Your diversion will be inspected for compliance. If it is not in compliance, an adjudicative proceeding will be commenced which could result in an Order to Cease the Use of Water from the State Engineer. If such an order is issued, the diversion will be tagged, closed, and locked by the water commissioner. In situations where the diversion cannot be closed, the State Engineer will seek a court order requiring the use of water be ceased until such time as the control structure and measuring device are installed and working properly.

Thank you for your cooperation in attending to this matter in a timely manner. If you have any questions concerning this notice, please contact me by phone at (801) 538-7380 or by e-mail at LeeSim@Utah.Gov or Kirk Forbush, Regional Engineer, by phone at (435) 896-4429 or by e-mail at KirkForbush@Utah.Gov

Dated this 20 day of February, 2004

A handwritten signature in black ink, appearing to read 'Lee H. Sim', with a stylized, flowing script.

Lee H. Sim, P.E.
Assistant State Engineer

cc: Kirk Forbush, Regional Engineer
Jan Ellet, Water Commissioner